MOTION FILED

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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-453

NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES,

Petitioner,

v.

E. T. KLASSEN,
POSTMASTER GENERAL OF THE UNITED STATES,
P. G. NASH, GENERAL COUNSEL
OF THE NATIONAL LABOR RELATIONS
BOARD, AND THE NATIONAL
ASSOCIATION OF LETTER CARRIERS, AFL-CIO,

Respondents.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE IN SUPPORT OF GRANTING PETITION FOR A WRIT OF CERTIORARI

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Opinions Below

The opinion of the United States Court of Appeals for the District of Columbia is reported at 514 F.2d 189 (A. 39). The opinion of the district court is reported at 369 F.Supp. 747 (A. 50).

Jurisdiction

The judgment of the Court of Appeals for the District of Columbia Circuit was entered June 9, 1975. By Order of Mr. Justice White, the time for filing a petition for writ of certiorari was extended to September 22, 1975 (A. 69). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

Questions Presented

1. Whether under the Postal Reorganization Act of 1970 the United States Postal Service can lawfully accord exclusive recognition to labor organizations to represent postal workers in bargaining with their employer for wages, hours and working conditions, when those workers have not selected those organizations to represent them and have been denied the right to select bargaining agents of their own choosing as provided by Act of Congress.

2. Whether postal workers, when for the first time granted by Congress the right to bargain collectively with their employer for wages, hours and working conditions, can be required to accept bargaining representatives appointed by the Congress and recognized by their employer.

3. Whether the Postal Reorganization Act of 1970, if construed to permit the exclusive recognition of labor organizations not selected by postal workers, unconstitutionally denies postal workers their fundamental right to bargain only through agents of their own choosing.

4. Whether petitioner's claims for relief are committed to the unreviewable discretion of the General Counsel of the National Labor Relations Board.

Statutory Provisions Involved

The pertinent provisions of the Postal Reorganization Act of 1970 are set forth as Appendix D to the Petition for a Writ of Certiorari of the National Alliance of Postal and Federal Employees.

Interest of the National Association for the Advancement of Colored People

The National Association for the Advancement of Colored People (hereafter, NAACP) is a voluntary membership corporation incorporated under the laws of the State of New York. On behalf of its 500,000 members, the NAACP has long been concerned with the terms and conditions of employment of black employees both in and out of government service. As Congress has extended the opportunity to bargain for such terms and conditions of employment to employees of the United States Postal Service, an agency with the highest proportion of black employees of virtually any other federal agency its size, the NAACP is concerned that the intent of Congress not be frustrated or thwarted by administrative actions such as those challenged by the Petitioner.

Motion for Leave to File Brief *Amicus Curiae* In Support of Petitioner's Application for the Writ

The NAACP respectfully moves this Court for leave to file the attached brief *amicus curiae* in the above-styled case.

Statement of the Case

For the sake of brevity, the *amicus* adopts the Statement of the Case set forth in the Petition for a Writ of Certiorari submitted by the National Alliance of Postal and Federal Employees.

ARGUMENT

The Writ Should Be Granted as the Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court.

In establishing the United States Postal Service as an independent Executive agency, Congress provided for a two year "transitional" period, expiring on July 20, 1973, during which postal employees would continue to be represented by the Craft Unions which have served as their collective bargaining agents prior to the Postal Reorganization Act of 1970. A. 41-42. Thereafter, Congress provided that the National Labor Relations Board would establish units appropriate for collective bargaining and appropriate units having been established, the postal employees would have the right to elect their bargaining representatives. 39 U.S.C. § 1202 and § 1203(a). Since the expiration of the "transitional" period, the Craft Unions and the Postal Service have negotiated two additional labor contracts, on July 20, 1973 and again on July 20, 1975, resulting in the establishment of collective bargaining agents until July 20, 1978, in the absence of any employee elections. In addition, although the Petitioner and others had initiated appropriate administrative proceedings before the National Labor Relations Board, the Board has refused to establish appropriate

units with such specificity that an election petition may be filed. A. 44, footnote 5. The cumulative result is that the Postal Service's 600,000 employees will have forced representation not of their own choosing for a period of five years beyond that contemplated by Congress.

The Petitioner, seeking to have the National Labor Relations Board define appropriate bargaining units so that it may initiate steps leading to an election in that unit, has therefore been caught up in a "Catch-22" application of the Postal Reorganization Act by the Circuit Court, with the not unlikely result that the postal employees may never be able to choose their own collective bargaining representatives. The court below has decided that the National Labor Relations Board is not mandated to establish appropriate units, A. 44, and that the Board has unreviewable discretion to deny all petitions for the establishment of such units. A. 48. Meanwhile, the Postal Service has been free to interpret the Act in such a manner as to allow for unlimited renegotiations of bargaining agreements which were established before the effective date of the Act.

The granting of the Writ by this Court is the only viable method by which the important questions concerning the collective bargaining rights of postal employees can be resolved.

CONCLUSION

For the reasons stated above, the *amicus* respectfully urges the Court to grant the Petition for a Writ of Certiorari of the National Alliance of Postal and Federal Employees.

Respectfully submitted,

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